CHENG SUI CHIANG

v.

CHANG KOO CHENG & ANOR. (2)

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[ORIGINATING MOTION NO. 12 OF 1981]
3 OCTOBER 1981

LAND LAW: *Restraint on dealing - Application for removal - Whether there was a serious question to be tried - Whether on the balance of convenience the status quo should be maintained.*

The applicant (caveatee), the registered owner of land the subject matter of the caveat, prayed for an order that a private caveat entered by the respondents (caveators) on the document of title be removed on the grounds that the caveators had no interest in the land. She stated in her affidavit that the land was transferred to her on 11 August 1957 by her father, now deceased, as a gift *inter vivos* and in consideration of love and affection.

The caveators were the brother and sister of the caveatee. In their affidavit, the caveators did not dispute that the land was transferred in the manner claimed by the caveatee but alleged that there were conditions stipulated by their father to which the caveatee had agreed in the presence of members of the family, the terms being that:

(a) The applicant was to hold the land for benefit of the father during his life time and thereafter to his nominees, the caveatee and the caveators in equal shares and

(b) not to sell, dispose or to deal with the land in such a way that the land shall vest or belong to a third person who is not a member of the family.

The caveator's contention was further supported by the affidavit of the remaining brothers and sisters.

During the father's life time, the caveatee had not enjoyed any benefits from the land. The father died in 1975. In 1978 the caveatee, before leaving for Australia with the view to residing there permanently, transferred part of the land each to the caveators, leaving more than half of the land in her share. The 1st caveator managed the land on her behalf and rendered an account to the caveatee from 1978 to 1980.

The caveatee, on her part, denied that the land was transferred to her subject to any conditions. It was also submitted that if there had been a trust created, it was void by reason of uncertainty of words. The Federal Court case of *Lee Phok Choo v. Ang Guan Yau & Anor.* [1975] 2 MLJ 146, was referred to.

Held:

[1] Without deciding on the merits of the case, there were indications that there existed such stipulations by the caveatee's father as to create a trust in respect of the land in favour of the caveatee and caveators.

[2] The three certainties, of property, of words and of objects, required for the creation of a valid trust, had been present. The fact that the trust was created orally was irrelevant, as the English statute of fraud was not applicable here.

[3] There was a serious question to be tried on the existence of the trust as alleged by the caveators and on the balance of convenience in order to keep the *status quo* in regard to the property, the caveat should stay pending the disposal of the claim by the caveators. *Eng Mee Yong & Others v. V. Letchumanan* [1979] 2 MLJ 212 referred to.

[The caveatee's application was dismissed with costs in the cause.]

Cases referred to:
Lee Phok Choo v. Ang Guan Yau & Anor [1975] 2 MLJ 146
Eng Mee Yong & Ors v. V. Letchumanan [1979] 2 MLJ 212

For the applicant - M/s. Chua Brothers, Azzat & Xavier
For the respondents - M/s. Muthu & Co.

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Also found at [1981] CLJ 170